

ISSN 2255-2707

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Citation

Thomas Rüfner, “Continental Jurists and English Common Law”, *GLOSSAE. European Journal of Legal History* 13 (2016), pp. 626-635 (available at <http://www.glossae.eu>)

Continental Jurists and English Common Law

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Abstract

We explore continental jurists' knowledge of and attitude to English (Common) law from (roughly) the 13th to the middle of the 18th century. During this period, English lawyers were constantly aware of the existence of an alternative legal system, the civil law, on the continent. Continental lawyers were mostly oblivious to English law. Among the few instances, where continental jurists refer to English law, a passage by Jacques de Révigny concerning the rule of primogeniture is prominent. Jacques's statement of English law is mostly, but not entirely accurate. Its inaccuracy apparently bothered neither Jacques, nor the many jurists who took over his example during the following centuries. In this and other cases, the continental lawyers' interest in English law was limited. They used English law as a source of examples and illustrations. A similar carelessness is evident from Hotman's derogatory assessment of Littleton's treatise on tenure. Hotman's remark, which caused great indignation among English lawyers was made in an offhand way. The situation changed around 1750. Continental lawyers, especially in Germany developed a keen interest in English law. C.H.S Gatzert's attempt to introduce 'communists' as a designation for lawyers studying the English common lawyer shows a new appreciation. While continental jurists were still bewildered some of the idiosyncrasies of English law, they began to regard English lawyers as their co-equals.

Keywords

Common Law, Ius Commune, Jacques de Révigny, Christian H. S. Gatzert, Comparative Law

Contents: 1. Gatzert and the Communists. 2. Jacques and the right of primogeniture. 3. Tancred and the flesh-pledge. 4. Hotman and the bad book. 5. Conclusion.

1. Gatzert and the "Communists"

Nescio equidem, an multum erret, si quis ab inimicitia et aemulatione, quae perpetua inter Communistas et Civilistas; vocabulo enim jure eodem eos designabimus, quo maioribus nostris licuit, Germanistas ICTos a Romanizantibus distinguere; viguisse dicitur, maximam partem horrendae illius nefandaeque barbariei atque incredibilis obscuritatis, qua involvuntur juris Anglici praecepta, derivandam esse statuat ...

"I, for my part, do not know, if it were a grave error if someone asserted that from the permanent war and competition—which we are told has always existed between civilians and communists (for we will use this word by the same right by which our forefathers would distinguish between Germanist jurists and Romanists)—derives the greater part of that terrible and unspeakable barbarism and of the incredible obscurity in which the doctrines of English law are wrapped."¹

¹ Gatzert, Ch. H. S., *De iure communi Angliae*, Göttingae, 1765, p. 45, n. On this work, see Ranieri, F. „Eine Begegnung mit dem Common Law an der Universität Göttingen Mitte des 18. Jahrhunderts“, in *Verfassung – Völkerrecht – Kulturgüterschutz*, Michaela Wittinger et al., ed, 2011, pp. 931-935.

The author of the remarkable proposal to call English lawyers “communists” because they study the common law is the German jurist Christian Hartmann Samuel Gatzert (d. 1807). In 1765 Gatzert published his treatise *De iure communi Angliae – Of the Common Law of England*, which is one of the first books dedicated to English law that were written by continental lawyers. Many similar books followed. Gradually, the bewilderment of continental lawyers at the strange language and unfamiliar concepts of English law grew lesser. Today, some knowledge of the Common law is widely regarded as indispensable for lawyers from the European continent. Introductory courses in English and American law are offered in many continental universities.

The following article is concerned with an earlier chapter in the history of the so-called Western Legal Tradition. We will explore the attitudes of continental jurists to the English common law before the times of Gatzert. While the extent to which Common lawyers knew about and were influenced by the continental civil law has long been the object of intensive research², relatively little is known about the attitude of continental civil lawyers to English law and English lawyers. What did medieval and early modern jurists on the continent know about the evolving English common law? Did they realise at all that the English legal system was fundamentally different from their own? Did they perceive it as an alternative to the continental *Ius Commune*? The following pages constitute a first attempt to answer these questions. The examples that will be discussed below were found using both traditional and digital research methods. No claim can be made to have detected all references to English law in continental legal literature or even a large part of them. It is hoped, however, that the material is to some extent representative.

2. Jacques and the right of primogeniture

The famed *doctor ultramontanus* Jacobus de Ravanis (Jacques de Révigny, d. 1296) seems to have been the first continental jurist to refer to English law in his work. In his commentary (*lectura*) on Justinian’s Code, which was printed in 1519 under the name of Petrus de Bellaperthica, Jacobus devotes considerable room to issues of conflict of laws³. Commenting on C. 1, 1, 1, he uses hypothetical cases to illustrate the problems arising from the applicability of different laws in different regions. Several of his cases involve parties with contacts to England. Two examples are used to illustrate the consequences of incompatible rules of asset distribution upon death⁴:

Sequuntur alie questiones: consuetudo est in Anglia quod mulier habeat tertiam partem bonorum mariti: in Gallia est consuetudo quod nihil habeat. Aliquis habens bona in Gallia et bona in Anglia, ducit uxorem in Anglia. Numquid uxor tertiam partem bonorum que sunt in Gallia, et

² Cf. Zimmermann, R., *Der europäische Charakter des englischen Rechts*, *ZEuP* 1 (1993), pp. 4-51.

³ On the importance of Jacques de Révigny for the development of international private law, see generally Meijers, E. M., *Études d’histoire du droit international privé*, Paris, 1967, pp. 94-101.

⁴ de Bellaperthica, P., *Lectura ... Codicis*, Parisiis, 1519, reprinted under the name Jacobus de Ravanis, Bologna, 1967, fol. 2va (ad C. 1, 1, 1); our reproduction of the Latin text follows Meijers, E. M., *Études d’histoire du droit international privé*, Paris, 1967, p. 126 which contains several corrections of the old print edition.

eorum que sunt in Anglia similiter habebit. Pone: in filiis consuetudo est in Anglia quod maior natus totum habeat; similiter in Gallia quod equaliter. Pater decedit habens plures filios et habet bona in Anglia et in Francia: numquid maior institutus habebit omnia bona utriusque loci.

“Further questions follow: The custom in England is that the wife gets the third part of her husband’s property. In Gaul, the custom is that she gets nothing. Someone who owned property both in Gaul and in England got married in England. Will his wife get the third part of the property located in Gaul and of that located in England as well? Assume that for sons the custom in England is that the oldest son gets everything; likewise in France, that [the property will be divided] equally. A father dies having several sons and he owns property in England and in France. Will the first-born have all the property in both places?”

The statements of English law are not completely wrong, but they are not entirely accurate, either. The treatises of Glanvill⁵ and Bracton⁶ confirm that a widow is entitled to one third of her husband’s property. Another third goes to the children; the remaining third is capable of free disposition by testament. The rule presupposes that there are surviving children of the deceased. More importantly, it only applies to personal property (movables). By contrast, the first-born son alone succeeds his father in the tenure of land according to Glanvill⁷ and Bracton⁸. Yet, while the law of primogeniture later became universally applicable, it was still confined to certain types of tenure in the 12th and 13th centuries⁹.

Clearly, Jacobus cannot be expected to expose the English law of succession in every detail. It seems significant, though, that he fails to grasp the fundamental distinction between personal and real property. Jacobus does not distinguish between the fields of application of the two customary rules, of which one gives one third to the widow and the other one leaves everything to the oldest son. In Jacobus’s account, both apply to the distribution of the deceased’s *bona*.

Arguably, the formulation *Pone: in filiis consuetudo est in Anglia quod maior natus totum habeat* makes the purported rule of English law part of what should be assumed for the purposes of the hypothetical. One might conclude that Jacobus is not really claiming that the rule actually exists in English law. However, Jacobus refers to the applicability of the law of primogeniture in English succession law at least three more times in his lectures on the Institutes, Digest, and Code in the context of a general discussion of customary law¹⁰. In these passages, he never marks the alleged rule as possibly fictitious.

In a third passage, which can also be found in his commentary on C. 1, 1, 1, there can be no doubt that Jacobus is asking his audience to assume the existence of a

⁵ Glanvill, *Tractatus de legibus et consuetudinibus regni Angliae* (G. D. G. Hall, ed.), Oxford, 2002, VII, 5.

⁶ Bracton, *De legibus et consuetudinibus Angliae* (G. E. Woodbine, ed.), Cambridge, Mass., 1968, fol. 60b-61.

⁷ Glanvill, *Tractatus* VII, 3.

⁸ Bracton, *De legibus et consuetudinibus*, fol. 64b.

⁹ On the development in the 14th century see Holdsworth, W., *A History of English Law*, vol. 3, 5th ed., London, 1942, pp. 172-173.

¹⁰ Waelkens, L. *La théorie de la coutume chez Jacques de Révigny*, Leiden, 1894, p. 453 (repetitio on Inst. 1, 2, 9) p. 487 (repetitio on D. 1, 3, 32; p. 535 (repetitio on C. 8, 52, 2).

certain rule of English law for the purposes of an hypothetical case rather than telling them there really is such a rule. Jacobus discusses different formal requirements for testaments¹¹:

Unde pone quod in Anglia consuetudo sit ut testamentum fiat cum sex testibus, in Gallia non possunt esse plures quam quattuor.

“Hence, assume that in England the custom is that a testament is made with six witnesses whereas in Gaul, there cannot be more than four.”

In fact, Glanvill and Bracton inform us that only two witnesses are needed (but more are permissible)¹².

The second famous *doctor ultramontanus*, Petrus de Bellaperthica (Pierre de Belleperche, d. 1308) closely follows the model of Jacobus de Ravanis. In his lecture (*repetitio*) on C. 1, 1, 1, he uses the same examples from English law as Jacobus. There is some variation and even a little confusion: With regard to testamentary formalities, Petrus asks his audience to assume that ten witnesses are required under English law. Like Jacobus, Petrus mentions the prevalence of the law of primogeniture in England. Where Jacobus (correctly) assumes that the widow gets one third of the deceased’s (movable) property under English law, Petrus states that the widow gets nothing in England¹³.

The Italian jurist Bartolus de Saxoferrato (d. 1357) quotes Petrus de Bellaperthica with another statement on English succession law¹⁴:

Per hoc dicit Petrus de Bellaperthica quod erat consuetudo in Anglia, quod si forensis decederet intestatus, succederet Ecclesia maior: modo decessit ibi quidam impubes, et furiosus intestatus. Certe dicit, quod Ecclesia non succedit: quia proprie non est intestatus: et verba statuti debent intelligi in dubio secundum propriam significationem ...

“Therefore, Petrus de Bellaperthica says that there is a custom in England that if a foreigner dies intestate, the cathedral church succeeds him. Now, a minor or an insane man died there intestate. Certainly, he says, the church does not succeed, because the deceased is not an intestate in the proper sense; and the words of a statute should be construed according to their proper meaning in case of doubt.”

The source for the quote ascribed to Petrus cannot be found in his printed works, but it may be hidden in an unedited manuscript. If the statement on the English rules of intestacy can be traced back to Petrus, it may be his only remark on English law that he did not take over from Jacobus. Like Jacobus’s observations on English law, his statement is not completely wrong, but it is not accurate either. It seems likely that Petrus, who presents the alleged rule first as customary, but then uses it to illustrate the strict interpretation of statutes, alludes to a provision of the English

¹¹ de Bellaperthica, P., *Lectura ... Codicis*, fol. 2rb (ad C. 1, 1, 1) = Meijers, *Études*, p. 125.

¹² Glanvill, *Tractatus* VII, 6; Bracton, *De legibus et consuetudinibus*, fol. 61 and 76/76b.

¹³ de Bellaperthica, P., *Repetitiones in ... Codicis Leges*, Franxcofurti, 1571, p. 11s (ad C. 1, 1, 1 nr. 15 and 16) = Meijers, E. M., *Études d’histoire du droit international privé*, Paris, 1967, pp. 131 and 133.

¹⁴ de Saxoferrato, B., *In secundam partem Infortiati commentaria*, Basileae, 1588, p. 540 (ad D. 38, 17, 1).

Magna Charta. Under s. 27 of the Great Charter, the personal property of a person dying without a testament had to be distributed under the supervision of the church (*per visum ecclesiae*). The provision was not aimed at foreigners specifically, but there is no reason to assume that it was not applicable to foreigners dying intestate in England. The supervision was exercised by the diocesan bishops as ordinaries¹⁵. This may explain the mention of the *Ecclesia maior* (cathedral church).

The two *ultramontani* have an apparent predilection for hypotheticals involving England¹⁶. However, the instances where they mention English statutes or customs make it clear that their knowledge of English law and their interest in this topic is limited. Jacobus and Petrus have access to information on English law, but they make little effort to report its rules with accuracy. Where no fitting example from actual English law is at hand, a fictitious rule (like that regarding the number of witnesses for a testament) is just as good.

The way in which the hypotheticals invented by Jacobus de Ravanis and Petrus de Bellaperthica were treated by the following generations of jurists gives little reason to believe that their knowledge of or interest in English law was greater than that of Jacobus and Petrus. The assumption that the English law of intestate succession gave the entire estate to the first-born son remained popular for many centuries. It was repeated by Cinus de Pistoia (d. 1336), and Bartolus de Saxoferrato¹⁷. Later jurists who used this example to illustrate the legal issues arising from divergent succession laws in different jurisdictions include the German jurist Nicolaus Everhardi (d. 1596)¹⁸, and the Italian Jacobus Menochius (Giacomo Menochio, d. 1607)¹⁹. The famous humanist Konrad Lagus (d. 1546) cited the alleged English rule as an example of a custom that departs from the precepts of natural justice but is acceptable nonetheless²⁰.

None of the learned authors from the continent who reported that the rule of primogeniture applied in English succession law ever bothered to check the correctness of the statement. It is characteristic of the relationship between continental civilians and English lawyers that neither this isolated instance of knowledge of English law nor its lack of precision escaped the attention of John Selden. In his treatise “Of the Original of Ecclesiastical Jurisdiction of Testaments”, he quotes verbatim from Bartolus the statement *consuetudo est in Anglia quod primogenitus*

¹⁵ Pollock, F. and Maitland, F. W., *The history of English law before the time of Edward I*, vol. 2, Cambridge, 1905, p. 360; a statute of 1357 requires them to appoint administrators for this purpose, 31 Edw. 3 st. 1 c. 11.

¹⁶ In addition to the examples discussed in the text, Jacobus frequently refers to England without mentioning English law, see de Petrus de Bellaperthica, *Lectura ... Codicis*, fol. 27ra (ad C. 1, 3, 36): fol. 99va (ad Auth. Sacramenta puberum post C. 2, 27, 1), fol. 147rb (ad C. 3, 19, 3) and the texts quoted by Bezemer, K., *What Jacques saw*, Frankfurt, 1997, pp. 50 f. and 125 and Bezemer, K., “The infrastructure of the early Ius Commune: The formation of regulae or its failure”, *The Creation of the Ius Commune* (J. Cairns and P. J. du Plessis, ed), Edinburgh, 2010, pp. 57-75, p. 65 n. 19.

¹⁷ a Saxoferrato, B., *In I. Partem Codicis Commentaria*, Basileae, 1588, p. 16-f (ad. C. 1, 1, 1, no. 42).

¹⁸ Everhardi Iunior, N., *Consilia*, vol. 2, Augustae Vindelicorum, 1603, p. 510 (cons. 32, no. 1); on the life of this jurist, see Bar, Chr. von and Dopffel, H. P. (eds.), *Deutsches Internationales Privatrecht im 16. und 17. Jahrhundert*, vol. 1, Tübingen, 1995, pp. 132-3. The same volume contains an edition of Everhardi’s consilium 32 at pp. 174ff.

¹⁹ Menochius, J., *Consiliorum sive Responsorum Liber Decimustertius*, Francofurti ad Moenum, 1637, p. 159 (cons. 1251, no. 40).

²⁰ Lagus, C., *Iuris Utriusque Traditio Methodica*, Basileae, 1553, p. 19 (p. 1, cap. 5, no. 7).

succedit in omnibus bonis – “It is customary in England that the first-born succeeds to all [the deceased’s] all goods” and notes that in this sentence, the word *bona* – “goods” must refer to the deceased’s inheritance (i.e. his real property) if the civilians “understand aright what they say”²¹.

3. Tancred and the flesh-pledge

The Italian jurist Roberto Lancellotto (d. around 1585²²) refers to an English custom very different from the one just discussed. He claims that in England the creditors of a deceased debtor may prevent the burial of his body until the debt has been paid or until they have received a security for payment. Lancellotto cites Vincentius Hispanus and Tancred of Bologna, two 13th century canonists, whose opinions he alleges to have found in the writings of Guido de Baysio (d. 1313)²³. If it is true that Vincentius and Tancred already reported the custom, this reference to English law is earlier than the remarks by Jacobus de Ravanis and Petrus de Bellaperthica.

The alleged English custom appears reminiscent of archaic Roman law and of atavistic traditions of using the debtor’s dead body as a ‘flesh-pledge’²⁴. Surprisingly, the statement may be accurate. The practice of preventing the debtor’s burial, expressly prohibited by Roman law²⁵, was apparently widespread in medieval and early modern England. As late as 1804, Lord Ellenborough found it necessary to reject it as “contrary to every principle of law and moral feeling”²⁶.

Lancellotto used the archaic English institution of the flesh-pledge, to illustrate a point of procedural law. Later authors took over the example²⁷, but it was not quoted as frequently as Jacobus de Ravanis’s remark on the rule of primogeniture in England. There is no indication that later authors tried to verify the information gleaned from Lancellotto (or the earlier canonists) independently. Although it may be correct, the tiny piece of information on English law related by Lancellotto does not change the overall impression that the continental jurists’ interest in English law was limited.

²¹ Selden, J., “Of the Original of Ecclesiastical Jurisdiction of Testaments”, *Tracts Written by John Selden*, London, 1683, reprinted Clark, 2006, p. 8.

²² Landi, A., “La grande storia di una piccola terra. Profili giuridici della restaurazione nel ducato di Massa e Carrara”, *Quaderni fiorentini* 35 (2006), pp. 143-224, at p. 214, n. 174.

²³ Lancellottus, R., *Tractatus de attentatis et innovatis*, Lugduni, 1585, pars 2, caput 4, limitatio 13, n. 4, p. 128. We have been unable to identify the place in the works of Guido de Baysio to which Lancellotto refers.

²⁴ Cf. Dondorp, H., “Partes secanto. Aulus Gellius and the Glossators”, *RIDA* 57 (2010), pp. 131-144, at p. 132 f. with n. 10; Kaser, M., and Knütel, R., *Römisches Privatrecht*, 20th. ed., München, 2014, p. 438.

²⁵ C. 9, 19, 6 (526) and Nov. 60 pr. and 1 (537).

²⁶ *Jones v Ashburnham* (1804) 4 East 455 at 465, 102 E. R. 905 at 909. See Nnamdi Nwabueze, R., “Legal control of burial rights”, *Cambridge Journal of International and Comparative Law* 2 (2013), pp. 196-226, at p. 211.

²⁷ See, for example, Borellius, C., *Decisionum Universarum ... Summae*, Coloniae Agrippinae, 1626, titulus 36, n. 164, p. 338; Brandmyller, J., *Manductio ad ius canonicum ac civile*, Basileae, 1651, p. 440.

4. Hotman and the bad book

That lawyers on the continent were mostly oblivious to English law is confirmed by an infamous remark of François Hotman (Hotomanus, d. 1590). In his work on feudal law, Hotman discusses the etymological connection of the words *feudum*, *feodum*, and *fee*. In this context, he remarks in passing that an advocate in the Parlement de Paris, the famous Étienne Pasquier (d. 1615), has given to him Littleton's treatise on tenures. Hotman goes on to say that the book is very poorly written (*incondite, absurde, et inconcinne scriptum*) and that stupidity, malice, and the intention to malign compete with each other in Littleton's book²⁸.

Hotman's derogatory judgement of one of the books of authority of the common law caused great indignation among English lawyers. Edward Coke (d. 1634) replied with a biblical insult in the preface to the tenth volume of his reports: He counted Hotman among those who are "desiring to be teachers of the law; understanding neither what they say, nor whereof they affirm"²⁹. Coke went on to warn against the dangers of civilians writing on English law in general. His defence of Littleton culminated in the assertion that Littleton's book was of absolute perfection and comparable to Justinian's institutes.³⁰ The fact that Hotman's remark was quoted by the English civilian John Cowell (d. 1611) in his Law Dictionary was among the causes which led to Cowell's book being banned in England³¹. Later writers on Littleton or on English legal history frequently mention Hotman³².

Hotman's remarks caused much less of an outcry on the continent. For more than a hundred years after Hotman's comments were published, they seem to have gone unnoticed by continental jurists. This is not surprising since continental writers had little occasion to discuss the merits of Littleton's book. A bibliographical survey of law books from the early 18th century limits its presentation of Littleton's treatise to a full quote of Hotman's rebuke. It does, however, qualify Hotman's words as uniquely severe (*singularia*)³³. For the time before the middle of the 18th century, the assumption that Hotman's criticism was "well known among legists"³⁴ seems unfounded.

The episode is more telling of the attitude of English lawyers, than of that of their continental counterparts. To the English lawyers, it mattered a lot, how the famous Hotman valued Littleton's book. On the other hand, it seems unlikely that Hotman thought for a long time before he wrote his hurtful comments. Likewise, there

²⁸ Hotomanus, F., *De feudis commentatio tripartita*, Coloniae, 1574, p. 661 f. – For the last statement, Hotman cites the Italian humanist Polydorus Virgilius (Polidoro Virgilio, d. 1555), but the source for the citation cannot be found, see Maitland, F. W., *English law and the renaissance*, Cambridge, 1901, p. 59.

²⁹ 1 Tim 7; see 10 Coke's Reports XXIX.

³⁰ 10 Coke's Reports XXX f.

³¹ Coquillet, D. R., *The civilian writers of Doctor's Commons*, Berlin, 1988, pp. 79-88.

³² See, for example, Kent, J., *Commentaries on American law*, vol. 2, 2d. ed., New York, 1832, p. 503 and the anonymous Preface in Littleton's Tenures in English, London, 1813, pp. VI f.

³³ Struvius, B. G., *Bibliotheca Iuris Selecta*, 5th. ed., Ienae, 1720, p. 467. The fact that the qualification was changed in later editions (cf. Butler, C., "Preface to the thirteenth edition", Coke, E., *The First Part of the Institutes of the Laws of England*, F. Hargrave and C. Butler, ed., vol. 1, 19th ed, London, 1823, p. XIII) is a sign of the changing attitude of continental lawyers to English law in the 18th century.

³⁴ Davis, K., *Periodization and sovereignty*, Philadelphia, 2008, 148, n. 5.

is no indication that Hotman's contemporaries or later readers attached great importance to the evaluation of Littleton contained in Hotman's commentary on feudal law.

5. Conclusion

In the second half of the 18th century, the attitude of continental lawyers to English law changed dramatically. Especially German lawyers developed a pronounced interest in English law and its history. They began to regard it as a model of a Germanic legal system which had developed independently from the "corrupting influence" of Roman law. This new interest led to the publication of Gatzert's books quoted at the beginning of this article and of several similar works³⁵.

Gatzert's creation of a special Latin name for the Common Lawyers marks the beginning of a new appreciation of English law on the continent. In spite of Gatzert's harsh words for the "unspeakable barbarism" and the "incredible obscurity" of English law, his book is the first hint at a perspective which accepts the English Common Law and the continental *Ius Commune* as two strands of the Western legal tradition.

The results of our short survey of references to English law in the writings of continental jurists show that for many centuries the relationship between the two legal systems was different: Since the times of Bracton, who structured his book *De legibus et consuetudinibus Angliae* after the model of Justinian's institutes, English lawyers are aware of the existence of an alternative model of law: that of continental civil law. This awareness is discernible in Sergeant Skipwith and Justice Shardelow as they discuss the meaning of the words *inhibitio novi operis*³⁶ and in Thomas More when he dumbfounds a doctor of the civil law by asking him a question in unintelligible English legal jargon³⁷. It is still present in Edward Coke when he pours his wrath on Hotman and other civilians and in William Blackstone when he bases his book on Justinian's (and Gaius's) system as Bracton had done before. At the same time, the continental counterparts of these famous English lawyers were almost completely oblivious to the existence of English law.

Even though it is likely that there are more references to English law than we have been able to find, it seems probable that many of them are similar to those discussed above: English law was used as a source for examples of strange foreign institutions that could illustrate a point in a legal discussion and that were then taken over by one author after the other. It was the objects of condescending and derogatory remarks which were made in passing. It took a long time until the continental lawyers accepted the "communists" as their co-equals.

³⁵ See generally Ranieri, F., "Eine frühe deutsche Übersetzung der 'Commentaries on the Law of England' von William Blackstone", *Das Recht und seine historischen Grundlagen. Festschrift für Elmar Wadle* (T. Chiusi and H. Jung, eds.), Berlin, 2008, pp. 875-899.

³⁶ Mich. 22 Ed. 3, fol. 14, pl. 37; cf. Selden, J., *Ad Fletam dissertatio*, David Ogg, (ed.), Cambridge, 1925, V, 8, p. 158.

³⁷ Stapleton, Th., "Vita Thomae Mori", in *Tres Thomae*, Duaci, 1587, p. 265. On this episode see Derett, J.D.M., "Withernam: A practical legal joke by Sir Thomas More", *The Catholic Lawyer* 7 (1961), pp. 211-222.

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